IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 296 OF 2005

MRS.SAVITA VILAS MAYENKAR AND ANR., ...Petitioners

Versus

SMT.ROBERTINA SOCORRIANA FERNANDES E VAS AND 4 ORS., ...Respondents

Mr. S. M. Walawaikar, Advocate for the petitioners.

Miss K. Sambari, Advocate for respondent Nos. 1 to 5.

Coram:- S.S. PARKAR, J.

Date:- 12th August, 2005

P.C.

This petition is filed against an interim order passed by the trial Court on 7th April, 2005, rejecting the application made on behalf of the plaintiffs/petitioners for production of survey report of Innovative Architecture. Since this petition is filed against the said order, by consent of the parties it was heard finally and is being disposed of by this Order.

2. The suit is filed by the plaintiffs/petitioners for permanent injunction against the respondents/defendants. The trial has not yet commenced. The parties had filed documents previously. This survey report is dated 3.1.2005, which was not relied on in the plaint. Therefore, by subsequent application, the plaintiffs wanted to rely on the said report. The trial Court has rejected this application for production of the survey report. It is argued on behalf of the petitioners that such a stage has not come even for filing the list of documents and, therefore, the application ought to have been allowed. On behalf of the rspondents it is contended that the plaintiffs cannot be allowed to make application after applications for production of documents. They ought to have produced this report

when other documents were brought on record.

3. In my view, this is a preliminary stage where the trial has also not begun and, therefore, the party cannot be disallowed from producing the documents. The suit was filed on 31.7.04. Written statement was filed on 12.8.04. The respondents can be allowed to file additional written statement and reply. The respondents can also be compensated by payment of costs of the application.

4. In the result, this petition is allowed and the impugned Order dated 7.4.2005 passed by the Civil Judge, Jr. Division, Bicholim is set aside and the application dated 12.1.2005 filed by the petitioners/plaintiffs for production of the survey report of Innovative Architecture dated 3.1.2005 is allowed on payment of costs of Rs.1000/- to the respondents.

S.S. PARKAR, J.